

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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TRAVELERS CASUALTY AND SURETY COMPANY as
Administrator for RELIANCE INSURANCE COMPANY,

Plaintiff,

vs.

DORMITORY AUTHORITY – STATE OF NEW YORK,
TDX CONSTRUCTION CORP., and KOHN PEDERSEN
FOX ASSOCIATES, P.C.,

Defendants,

-----X
DORMITORY AUTHORITY OF THE STATE OF
NEW YORK and TDX CONSTRUCTION CORP.,

Third-Party Plaintiffs,

vs.

TRATAROS CONSTRUCTION, INC.,

Third-Party Defendant,

-----X
TRATAROS CONSTRUCTION, INC., and TRAVELERS
CASUALTY AND SURETY COMPANY

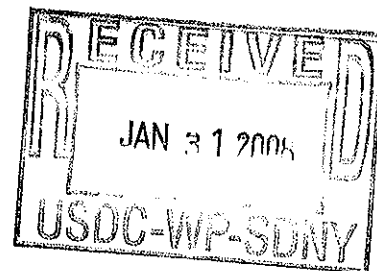
Fourth-Party Plaintiffs,

vs.

CAROLINA CASUALTY INSURANCE COMPANY;
BARTEC INDUSTRIES, INC.; DAYTON SUPERIOR
SPECIALTY CHEMICAL CORP. a/k/a DAYTON
SUPERIOR CORPORATION; SPECIALTY
CONSTRUCTION BRANDS, INC. t/a TEC; KEMPER
CASUALTY INSURANCE COMPANY d/b/a KEMPER
INSURANCE COMPANY; GREAT AMERICAN
INSURANCE COMPANY; NATIONAL UNION FIRE
INSURANCE COMPANY OF PITTSBURGH, PA.;
UNITED STATES FIRE INSURANCE COMPANY;

Case No.: 07- CV-6915 (DLC)

**FIFTH-PARTY
COMPLAINT**



ALLIED WORLD ASSURANCE COMPANY (U.S.)
INC. f/k/a COMMERCIAL UNDERWRITERS
INSURANCE COMPANY; ZURICH AMERICAN
INSURANCE COMPANY d/b/a ZURICH INSURANCE
COMPANY; OHIO CASUALTY INSURANCE
COMPANY d/b/a OHIO CASUALTY GROUP;;
HARLEYSVILLE MUTUAL INSURANCE COMPANY
(a/k/a HARLEYSVILLE INSURANCE COMPANY);
JOHN DOES 1- 20 AND XYZ CORPS. 1-12,

Fourth-Party Defendants,

-----X
DAYTON SUPERIOR CORPORATION,

Fifth-Party Plaintiff,

vs.,

G.M. CROCETTI, INC.,

Fifth-Party Defendant.

-----X
Fourth-Party Defendant, DAYTON SUPERIOR CORPORATION s/h/a DAYTON
SUPERIOR SPECIALTY CHEMICAL CORP. a/k/a DAYTON SUPERIOR CORPORATION
("DAYTON"), by its attorneys, GOLDBERG SEGALLA, LLP, as and for their Fifth-Party
Complaint against G.M. CROCETTI, INC., alleges as follows:

JURISDICTION AND VENUE

1. At all times relevant hereto, DAYTON SUPERIOR CORPORATION, was a corporation organized and existing pursuant to the laws of the State of Delaware.
2. At all times relevant hereto, G.M.CROCETTI, INC., was and is a corporation organized and existing pursuant to the laws of the State of New York.
3. The Court has jurisdiction over this action pursuant to 28 U.S.C. § 1367.

4. This action is properly venued in the United States District Court for the Southern District of New York pursuant to 28 U.S.C. § 1391, as a substantial part of the events or omissions giving rise to the claims herein occurred within the District.

PLEADINGS

5. Plaintiff, TRAVELERS CASUALTY AND SURETY COMPANY as Administrator for RELIANCE INSURANCE COMPANY, originally commenced this action by filing and service of a Complaint and Jury Demand. (Exhibit "A").

6. Issue was joined by the defendants, DORMITORY AUTHORITY OF THE STATE OF NEW YORK and TDX CONSTRUCTION CORP., by ANSWER OF DASNY AND TDX WITH AFFIRMATIVE DEFENSES, COUNTERCLAIMS, AND CROSS-CLAIMS, dated September 28, 2007. (Exhibit "B").

7. DORMITORY AUTHORITY OF THE STATE OF NEW YORK and TDX CONSTRUCTION CORP. filed and served a Third-Party Complaint, dated September 28, 2007, against TRATAROS CONSTRUCTION. (Exhibit "C").

8. Issue was joined by the third-party defendant, TRATAROS CONSTRUCTION, by TRATAROS CONSTRUCTION, INC.'S ANSWER TO THIRD-PARTY COMPLAINT, dated November 13, 2007. (Exhibit "D").

9. TRATAROS CONSTRUCTION and TRAVELERS CASUALTY AND SURETY COMPANY filed and served a Fourth-Party Complaint, dated November 13, 2007, against numerous parties, including the instant fourth-party defendant, DAYTON SUPERIOR CORPORATION S/H/A DAYTON SUPERIOR SPECIALTY CHEMICAL CORP. a/k/a DAYTON SUPERIOR CORPORATION. (Exhibit "E").

10. DAYTON SUPERIOR CORPORATION joined issue with the service of an Answer to Fourth-Party Complaint, dated November 30, 2007. (Exhibit "F").

10. This action arises out of the construction of building for Baruch College at 55 Lexington Avenue, New York, New York.

11. The Fourth-Party Plaintiffs have alleged that in the event that they are held liable for the claimed damages of DORMITORY AUTHORITY OF THE STATE OF NEW YORK and/or TDX CONSTRUCTION CORP., then DAYTON SUPERIOR CORPORATION shall be liable to the fourth-party plaintiff for indemnification, contribution or exoneration based upon alleged negligence, breach of contract and/or breach of warranty.

12. The allegations and claims of the fourth-party plaintiffs as against DAYTON SUPERIOR CORPORATION have been denied.

AS AND FOR A CAUSE OF ACTION AGAINST G.M. CROCETTI, INC.

13. DAYTON SUPERIOR CORPORATION repeats, reiterates, and realleges each and every allegation contained in paragraphs "1" through "12" inclusive, with the same force and effect as if same were more fully set forth at length herein.

14. The fifth-party defendant, G.M.CROCETTI, INC., performed certain work at the subject premises located at 55 Lexington Avenue, New York, New York, including the installation of certain flooring.

15. The fifth-party defendant, G.M.CROCETTI, INC., was negligent in the performance of its work at the subject premises located at 55 Lexington Avenue, New York, New York.

16. If the fourth-party plaintiffs, TRATAROS CONSTRUCTION and TRAVELERS CASUALTY AND SURETY COMPANY, were caused to sustain any of the damages in the manner

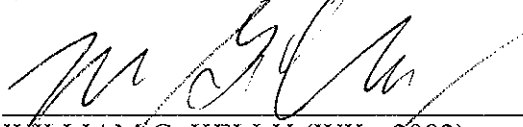
alleged in the Fourth-Party Complaint, all of which is denied by the instant fourth-party defendant/fifth-party plaintiff, such damages and injuries were caused wholly and solely by the negligence, recklessness, and carelessness of the fifth-party defendant, G.M. CROCETTI, INC.

17. DAYTON SUPERIOR CORPORATION is entitled to contribution and/or indemnification from, and to have judgment over and against the fifth-party defendant, G.M. CROCETTI, INC., for all or part of any verdict or judgment that the fourth-party plaintiffs may recover against the instant fourth-party defendants/fifth-party plaintiffs.

WHEREFORE, the fourth-party defendant/fifth-party plaintiff, DAYTON SUPERIOR CORPORATION, demand judgment dismissing the Fourth-Party Complaint, together with costs and disbursements, and further demands that in the event that the instant fourth-party defendant/fifth-party plaintiff is held liable to the fourth-party plaintiffs, then the fourth-party defendant/fifth-party plaintiff shall have judgment over and against the fifth-party defendant, G.M. CROCETTI, INC., on the basis of common law indemnity and/or contribution in such amounts as a jury or Court may direct, together with the costs, disbursements and expenses of this action.

Dated: White Plains, New York
January 30, 2008

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